FILED
FEB 23 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 573

ESTATE OF RALPH RAINGER, Deceased, Elizabeth Rainger, Executrix,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner, Estate of Ralph Rainger, deceased, Elizabeth Rainger, Executrix, prays that a writ of certiorari issue to the United States Court of Appeals for the Ninth Circuit to review its decree [R. 265] which affirmed the judgment of the Tax Court of the United States [R. 228] re-determining a deficiency of Federal Estate tax against the petitioner [R. 228].

Opinions Below.

There was no opinion of the Court of Appeals excepting its brief affirmance of the decision of the Tax Court [R. 264] reported in 183 F. 2d 587, and excepting its brief denial of the petition for rehearing [R. 266].

The opinion of the Tax Court of the United States [R. 212] is reported in Vol. 12 Tax Court Reports 483.

Jurisdiction.

This proceeding arises from a decision of the Tax Court [R. 228] re-determining a deficiency of the Federal estate tax under Sections 810-824 of the Internal Revenue Code.

The judgment of the Court of Appeals was entered on August 20, 1950 [R. 265]; and the petition for re-hearing filed on September 15, 1950 [R. 266] was denied by that Court on December 20, 1950 [R. 266].

The jurisdiction of this Court is invoked under 26 U. S. C. A., Sec. 1141(a) and under 28 U. S. C. A., Section 1254(1).

Constitutional Provisions and Statutes Involved.

Article IV, Section 1, United States Constitution, provides:

> "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may be general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

28 U. S. C. A., Section 687, provides:

> ". . . The records and judicial proceedings of the courts of any State . . . shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. AND THE SAID RECORDS AND JUDICIAL PROCEEDINGS, SO

AUTHENTICATED, SHALL HAVE SUCH FAITH AND CREDIT GIVEN TO THEM IN EVERY COURT WITHIN THE UNITED STATES AS THEY HAVE BY LAW OR USAGE IN THE COURTS OF THE STATE FROM WHICH THEY ARE TAKEN." (Capitals supplied.)

28 U. S. C. A., Section 725, provides:

"*Laws of States as rules of decision.* The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

Questions Presented.

(1) Whether the Federal Tax authorities and courts may deny full faith and credit and refuse to adhere to a final decree of the California State Probate Court with jurisdiction of decedent's estate, which adjudicated that the decedent's interest in property was not community property but separate property (and which was against this petitioner on other issues, and was entered in a proceeding required by and in accordance with State Statutes and in which the State of California and petitioner were adverse parties, and of which proceeding statutory notice was given to the world, and which decree otherwise is conclusive and binding on the Federal Tax authorities and courts)—because during the trial in the State Court, the attorney for the State appeared to default on such issue after relying upon a statutory presumption in favor of the State, although admittedly contesting on other issues, and because the Tax Court held there was no real controversy on such issue, although there was on such other issues.

(2) Whether a proceeding required by and in accordance with State Statutes (and without which the administration of a probate estate cannot be completed under State law, and in which the State of California and the petitioner were adverse parties, and in which the State of California relied upon a statutory presumption in its favor), did present a real controversy so that a decree therein on an issue presented by the pleadings was based on a real controversy.

(3) Whether a State Probate Court decree (otherwise conclusive and binding on the Federal Tax authorities and courts) loses its conclusiveness because one of the parties thereto had anticipated therein the possibility of future Federal Estate Tax proceedings and desired to and did avoid an adverse decision in the State Probate Court on an issue as to the nature and extent of the decedent's interest in property which might otherwise have been later used adversely against said party in future Federal Estate Tax proceedings.

(4) Whether a second State Probate Court decree, a decree of partial distribution (which was made in accordance with the State Statutes, and on notice to the world as provided by statute and was an *"in rem"* decree in decedent's probate, and which like the previous State Probate Court decree determined the nature and extent of the decedent's interest in property), was conclusive and binding on the Federal Tax authorities and courts and was entitled to full faith and credit even though no one other than on behalf of petitioner appeared in the probate hearing.

(5) Whether the Federal Tax authorities and courts were bound to adhere to and give the same full faith and credit as is given by New York to the written articles of

association of a voluntary unincorporated association (Ascap) organized and existing under the laws of New York, and which articles governed and bound its members including the decedent and specified decedent's interest only as a life estate, or whether they were permitted to hold contrary thereto and that the decedent's interest was more than a life estate.

Statement of the Case.

In December, 1942, the petitioner gave written notice to the Collector of Internal Revenue as provided in 26 U. S. C. A., Section 820 of the pendency of the probate [R. 12, 28].

On March 21, 1945, the California State Probate Court made a final decree [Pet. Ex. 7, App. No. 1], in the decedent's probate determining that the decedent's interest in property was not community property but was separate property and held against this petitioner on other substantial issues.

Thereafter, the State Court, on a petition, made a decree of partial distribution in which it found the petition to be true and in effect confirming that the property was not community property but was separate property and decreeing a partial distribution accordingly. [Pet. Ex. 8; App. No. 2.]

Notwithstanding the State Court decrees, the Commissioner held contrary and that the property was community property and not separate property [R. 22] and accordingly determined a deficiency in the Federal Estate tax [R. 23].

Additionally, the decedent was a member of the American Society of Composers, Authors and Publishers (Ascap) at the time of his death [R. 13, 28], and the written Articles of Association [Pet. Ex. 1] of such voluntary unincorporated association organized and existing under the laws of New York [R. 198] governed the members and decedent's rights in Ascap [R. 13-14, 36], and contained provisions which made his interest merely a life interest ceasing upon his death [Pet. Ex. 1, pp. 32-34].

The State of New York and its courts held that the articles of association of Ascap, a voluntary unincorporated association organized under the laws of New York, were the organic law of that association governing and determining the rights of the members, which included the decedent.

In *Gem Music v. Taylor,* 60 N. E. 2d 196, 294 N. Y. 34, the Court of Appeals of New York said:

> "The Articles of Association by which Ascap was governed are annexed to and made a part of the complaint. These Articles were the law of Ascap binding upon all its members."

Accord:

> *Broadcast Music v. Taylor,* 55 N. Y. S. 2d 94, 100.

The respondent disregarded the articles of association and held in effect that the decedent had more than a life interest therein, and contrary to the State Court decree, that the same was community property and not separate

property [R. 22], and accordingly determined a deficiency in the Federal Estate tax.

A petition for a re-determination of the deficiency was filed in the Tax Court [R. 7].

Exemplified copies of the first State Court decree and of the second State Court decree of partial distribution duly authenticated in accordance with the requirements of 28 U. S. C. A., Section 687, were introduced in the Tax Court [Pet. Exs. 7 and 8; App. Nos. 1 and 2; R. 88-92; 93-94].

The Tax Court refused to be bound by or follow the determination of the Probate Court decrees as to the decedent's interest in the property as being not community property but separate property, and held contrary thereto and that the property was community property and not separate property [R. 217].

The Tax Court held that the first State Court decree [Pet. Ex. 7; App No. 1] did not result in a proceeding that was a real controversy [R. 205], even though the State of California was a party thereto, even though some substantial issues were decided against this petitioner, even though the proceeding was not only in accordance with but required by the State statutes, even though the State of California expressly relied upon statutory presumptions in favor of its position and the report [Resp. Ex. X, p. 9; R. 171].

The Tax Court also held that the second State Court decree [Pet. Ex. 8; App. No. 2], namely, the decree of partial distribution, was not binding, since the proceeding

was wholly uncontested and the court decree was a mere copy of the petition which recited and relied upon the previous Probate Court decree [R. 220]—notwithstanding that proceedings for a decree of partial distribution are *in rem* proceedings based on notice to the whole world and in accordance with State statutes.

The Tax Court held that although there was a real controversy and a bitter contest on other issues such as the Ascap issue in the proceeding between the State of California and the petitioner, yet that on the issue as to whether it was community property or not that there was no real controversy [R. 220.]

Although the State Probate Court had ruled against the petitioner in the probate estate and held that the decedent's interest was more than a life estate [Pet. Ex. 7, par. first; App. No. 1] and in making such holding also held that such interest was not community property [Pet. Ex. 7, par. first; App. No. 1], and although the Tax Court stated that the controversy on the Ascap issue was bitterly contested [R. 220], . . . the Tax Court did not agree with the determination that it was not community property, and declined to adhere to the decision of the State Court even on the contested issue and treated the Ascap issue *de novo* and as though there had been no State Court proceeding [R. 221], and held as the State Court did, that the decedent had more than a life interest in Ascap, but ruled contrary to the State Court that the said issue was community property and not separate property [R. 221-2].

The Tax Court decided that there was a deficiency in the estate tax [R. 228]; from such decision, a petition for review was filed in the Court of Appeals for the Ninth Circuit [R. 230-242].

The Court of Appeals made an order affirming the judgment of the Tax Court [R. 264], and entered its judgment [R. 265]; on December 20, 1950, the Court of Appeals made its order [R. 266] denying the petition for rehearing which had been filed within the time allowed therefor by the Court [R. 266].

Specification of Errors to Be Urged.

The Court of Appeals erred:

(1) In failing to hold that either one if not both of the two final California Probate *"in rem"* decrees, which determined the decedent's interest in property, and which were made in accordance with the State Statutes, were conclusive and binding upon the respondent and Federal Courts in applying the Internal Revenue Code.

(2) In failing to hold that the respondent and Federal Courts were required to adhere and give full faith and credit to the written Articles of Association of Ascap, a voluntary unincorporated association organized and existing under the laws of New York, and which the courts of New York have held were binding upon the members of the Society, and which specified the decedent's interest therein as a life estate.

REASONS FOR GRANTING THE WRIT.

I.

Regarding the Conclusiveness of the Two (2) Final State Probate Court Decrees Determining Decedent's Interest in Property:

First: The decisions of the courts below are directly in conflict with the decisions of this Supreme Court and the other Courts of Appeal which held the rule to be well settled that State law controls in determining the nature and extent of the interest or estate which a taxpayer has in property and in applying the Internal Revenue Code, and that the decision of the State Court thereon is conclusive upon the Federal tax authorities and courts in applying the Internal Revenue Code.

United States Constitution, Article IV, Section 1;

28 U. S. C. A., Section 687;

28 U. S. C. A., Section 725;

Freuler v. Helvering, 291 U. S. 35, 78 L. Ed. 634;

Blair v. Commissioner, 300 U. S. 5, 81 L. Ed. 465;

Henricksen v Baker-Boyer, 139 F. 2d 877 (C. C. 9, 1944);

Eisenmenger v. Commissioner, 145 F. 2d 103, 106 (C. C. 8);

Estate of Whitney Waterman, Memo. T. C., Docket 1911, Aug. 7, 1946;

Morgan v. Commissioner, 309 U. S. 78, 84 L. Ed. 585;

Masterson v. Commissioner, 141 F. 2d 399;

Nashville v. Commissioner, 136 F. 2d 148;

First National Bank v. Commissioner, 39 B. T. A. 828;

Bullard v. Commissioner, 90 F. 2d 144.

In the *Freuler* case, this Court reversed the Court of Appeals for the Ninth Circuit and held that the decree of the California Probate Court, with reference to the property rights in the estate, was conclusive and binding upon the tax authorities, even though the parties in the Probate Court proceedings had anticipated the use of the State Court decree in the Federal tax proceedings; this Court said:

> "Moreover, the decision of that court, until reversed or overruled, establishes the law of California respecting distribution of the trust estate . . . The rights of the beneficiaries are property rights and the court has adjudicated them. What the law as announced by that court adjudges distributable is, we think, to be considered in applying 219 of the Act of 1921. . . . The decree purports to decide issues regularly submitted and not to be in any sense a consent decree. The court ruled against the remainderman on one point, and in his favor on another, that here involved. . . . We cannot seize on the form of the settlement made between the parties either to impugn the good faith and judicial character of the state court's decree, or to ignore the decree and its conclusiveness as to what was in fact and in law income distributable to the beneficiaries under the trust. The judgment of the Court of Appeals is reversed."

In the *Blair* case, this Court reversed the Court of Appeals and followed the *Freuler* case.

The decisions of the courts below in the instant case are directly in conflict with the decisions of the same Court

of Appeals for the Ninth Circuit in *Henricksen v. Baker,* 139 F. 2d 877, and also of the Court of Appeals for the Eighth Circuit in *Eisenmenger v. Commissioner,* 145 F. 2d 103, and in *Helvering v. Rhodes Estate,* 117 F. 2d 509.

In the *Henricksen* case, the Ninth Circuit Court, relying on the *Freuler* and *Blair* cases of this Court, held that the probate proceeding was one *in rem* and that since the statutory provisions regarding service and notice were observed, it was binding upon "all persons in the world" and that the decree of the Washington State Probate Court in connection with the hearing fixing inheritance taxes, which determined certain facts as to the nature and extent of the interest of the parties in property in the estate, was conclusive and binding on such questions in a later proceeding on a Federal Estate Tax return.

In the *Eisenmenger* case, the Eighth Circuit Court held that the State Court decision was conclusive and binding upon the Federal Court in a tax matter; there had been a previous trial in the Tax Court; the taxpayer even introduced a Tax Court record in the State Court proceeding, indicating that the taxpayer anticipated using the State Court decision in the second Tax Court proceeding; the Court held that the State Court decree was conclusive and binding on the Federal Court in the second Tax Court proceeding.

In the *Helvering* case the Eighth Circuit Court also held that the State Court decree that the decedent did not own stock in question at the time of her death, was con-

clusive and binding upon the tax authorities and Federal Courts.

The decision in the instant case is also directly in conflict with the decision of the District Court for the Southern District of California where this Tax Court proceeding was tried, namely, *Brooks v. United States,* 84 Fed. Supp. 622 (D. C. S. D. Cal. 1949).

The same kind of order as the first State Court decree [Pet. Ex 7; App. No. 1] was held in the *Brooks* case to be conclusive and binding upon the Federal tax authorities; the order was made on similar report of an appraiser appointed by the same Probate Court who determined the decedent's interest in the property; no formal hearing was had on the report; no evidence was introduced; and yet upon the basis of the appraiser's report alone and the statutory presumptions, the same California State Probate Court made the decree adjudging the decedent's interest in property.

The Federal tax authorities refused to be bound by the State Court order in the *Brooks* case; however, the District Judge held that they were bound by such decree and that California law controlled in determining the nature and extent of the decedent's interest in applying the Internal Revenue Code, and that the decision of the State Probate Court was conclusive upon the Federal tax authorities—notwithstanding that the Commissioner cited and relied in the *Brooks* case on the Tax Court decision in this *Rainger* case.

Second: The questions presented are of importance in the tax law as well as in the field of state property and probate laws, and in the field of constitutional law.

The settlement of the questions by this Court is plainly in the public interest since it is likely to be presented in numerous tax cases, where State Probate Courts determine within their jurisdiction the title to property and the Federal tax authorities and courts rule opposite thereto and disregard such State Court decrees.

The effect of the decisions in the instant case is to impugn the good faith and judicial character of the State Court decrees, valid on their face, in proceedings required by or in accordance with State Statutes, after notice to the entire world in accordance with the statutes, and where the State Courts admittedly have jurisdiction, and in a field of local law as to the nature and extent of the decedent's interest in property; it appears that this is contrary to the spirit and letter of the full faith and credit clauses of the Constitution (Article IV, Section 1) and statutes (28 U. S. C. A., Secs. 687 and 725) and of the decisions of this Supreme Court in *Freuler v. Helvering, supra*, and *Blair v. Commissioner, supra.*

The effect of the decisions in the instant case is to impair the finality and effectiveness of the State Probate Court decrees, and to create confusion and instability with reference to titles to property in estates, with the State Courts determining the title to property in one way, and the Federal Courts disagreeing therewith and determining them in an opposite way; thus, creating clouds on the title to property secured in or through probate proceedings.

The effect of the decisions of the lower courts is to make an exception to the full faith and credit clauses, as well as the rule requiring the Federal Courts to follow local law, so that local final judgments are entitled to full faith and credit only when there are no default judgments or unopposed judgments even though there are involved substantial adverse parties, like the State of California, and notwithstanding that notice of the *"in rem"* proceedings is given to the world in accordance with State Statutes.

Third: The decisions of the courts below are believed to be erroneous.

Exemplified copies of both of the State Court decrees duly authenticated in accordance with the requirements of 28 U. S. C. A., Section 687, were introduced in the Tax Court [Pet. Exs. 7 and 8; App. Nos. 1 and 2].

Such decrees were valid on their face and showed that they were made within the jurisdiction of the Court; it was admitted by the respondent that the State Court was a Court of competent and proper jurisdiction for the probate of the decedent's estate [R. 11, 36], and that the decrees were final [R. 193].

The decisions of this Court as well as the other Courts of Appeal establish a well-settled principle that the determination of the nature and extent of the decedent's interest in property by a State Probate Court is conclusive and binding upon the Federal tax authorities and courts. This rule was not applied by the Court below.

II.

Regarding Failure to Give Full Faith and Credit to the Articles of Association of Ascap Limiting Decedent's Interest to a Life Interest:

FIRST: The decisions of the courts below are directly in conflict with the decision of this Court in *United Commercial Travelers v. Wolfe,* 331 U. S. 586, 91 Law. Ed. 1687 (1947).

In the *United Commercial Travelers* case, this Court reversed the judgment of the Court below and held that the Court in South Dakota should have given effect to a provision of the Constitution of a fraternal society incorporated in Ohio which specified the rights and liabilities based upon membership rights of a decedent under the Constitution of that society, by reason of the full faith and credit clause of the Constitution of the United States.

In the instant case, the lower courts declined to give effect to the provisions of the articles of association of Ascap, a voluntary unincorporated association operating under the laws of New York [Resp. Ex. M, p. 4; R. 198].

The highest court of New York held that the articles of association of Ascap were the law of Ascap binding upon all its members.

Gem Music v. Taylor, 60 N. E. 2d 196, 294 N. Y. 34;

Broadcast Music v. Taylor, 55 N. Y. S. 2d 94, 100.

SECOND: The question presented is of importance not only in tax law, where by reason of the deaths of the numerous members of Ascap, this question will arise, but in the field of Constitutional law.

The settlement of the questions by this Court is plainly in the public interest, since it is likely to be presented in

numerous cases involving fraternal and similar societies, whose rights are fixed in their articles of association under the laws of the State of their organization.

The effect of the decisions in the instant case is to fail to give full faith and credit required by the Constitution of the United States to the organic law of fraternal and similar organizations.

THIRD: The decisions of the courts below are believed to be erroneous.

It was admitted by the respondent in the pleadings in this case that the decedent's rights in so far as Ascap was concerned were subject to the written articles of association of Ascap [R. 13-14, 36].

The written articles of association of Ascap provided in effect that the decedent had nothing but a life interest subject to termination at his death [Pet. Ex. 1, pp. 32-33].

The lower courts held that the decedent had more than a life interest [R. 221-2].

Conclusion.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfuly submitted,

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